

JUDGE CARTER

21 MISC 787

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Applicant,	:	No. :
- against -	:	
	:	ECF CASE
GERALD FAUTH,	:	
	:	
Respondent.	:	
-----		X

**SECURITIES AND EXCHANGE COMMISSION'S  
APPLICATION FOR  
AN ORDER TO SHOW CAUSE AND FOR AN ORDER  
REQUIRING COMPLIANCE WITH AN INVESTIGATIVE SUBPOENA**

The Securities and Exchange Commission (the "Commission"), by its undersigned counsel, respectfully submits this Application for an Order to Show Cause and for an Order Requiring Compliance with Subpoena (the "Application"), together with the supporting Memorandum of Law, and Declaration of Nancy A. Brown ("Brown Decl."), and exhibits thereto, based on the following:

1. Respondent Gerald Fauth ("Fauth" or "Respondent") has refused to comply with a lawful Commission investigative subpoena (the "Subpoena") served on him through counsel in

May 2020. The investigative Subpoena requires Fauth to appear for testimony in the Commission's non-public investigation, entitled In the Matter of Certain Issuers Related to Covid 19 (TISO) (Internal File No. NY-10215) (the "Investigation").

2. On March 25, 2020, the Commission issued an Order Directing Private Investigation and Designating Officers to Take Testimony in the Investigation pursuant to Section 20(a) of the Securities Act of 1933 [15 U.S.C. § 77t(a)] (the "Securities Act") and Section 21(a) of the Securities Exchange Act of 1934 [15 U.S.C. § 78u(a)] (the "Exchange Act"). The Formal Order, and a Supplemental Formal Order, issued June 16, 2021 (collectively, the "Formal Order"), designated certain individuals as officers of the Commission empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records deemed relevant or material to the investigation, pursuant to Section 19(c) of the Securities Act [15 U.S.C. § 88s(c)] and Section 21(b) of the Exchange Act [15 U.S.C. § 78u(b)].

3. Pursuant to the Formal Order, the Commission is investigating whether any persons or entities have engaged in acts constituting violations of various provisions of the federal securities laws by, among other things, engaging in a scheme to defraud, in connection with the trading of certain securities on the basis of material nonpublic information in breach of a fiduciary or other duty arising out of a relationship of trust and confidence.

4. On May 26, 2020, the Commission staff served Fauth, through counsel, with the Subpoena for testimony, and setting June 17, 2020, as the date for testimony. Since that time, counsel for Respondent has refused the Commission staff's repeated efforts to set a date for Respondent's testimony, or to discuss reasonable accommodations for that testimony, citing Fauth's health condition, even as that condition has appeared to improve.

5. Respondent's counsel cites Fauth's medical issues as grounds for why he cannot sit for even a limited session of testimony even though Fauth continues to be employed as one of three members (and, since July 2021, the Chair) of the National Mediation Board ("NMB"), an independent federal agency that "facilitates labor-management relations within the nation's railroad and airline industries," with the goal of, among other things, "avoiding interruption to commerce or to the operation of any carrier." See [https://nmb.gov/NMB\\_Application/index.php/mission-organization/](https://nmb.gov/NMB_Application/index.php/mission-organization/). In July 2021, President Biden nominated Fauth for an additional three-year term as a Member of the NMB. According to the NMB's records, Fauth has been a regular participant in the NMB's regular meetings for at least the last three months.

6. The Commission therefore submits this Application for an Order to Show Cause, in the form attached, requiring Respondent to show cause why he should not be ordered to appear (in person or remotely by video conference) for three hours of testimony pursuant to the Subpoena.

7. The Commission further requests that, absent just cause for Fauth's failure to comply with the Subpoena, the Court enter an Order requiring Respondent to obey the Subpoena by November 2, 2021.

8. The Court has jurisdiction over this matter and venue properly lies within the Southern District of New York, pursuant to Section 21(c) of the Exchange Act [15 U.S.C. § 78u(c)] ("In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on . . . in requiring . . . the production of books, papers, correspondence, memoranda, and other records"). Further, Section 21(c) of the

Exchange Act provides that “any failure to obey such order of the court may be punished by such court as a contempt thereof.” 15 U.S.C. § 78u(c).

WHEREFORE, the Commission respectfully requests:

I.

That the Court enter an Order to Show Cause, directing Respondent to show cause why this Court should not enter an Order requiring him to appear for three hours of testimony pursuant to the Subpoena.

II.

That the Court enter an Order requiring Respondent to comply with the Subpoena by November 2, 2021.

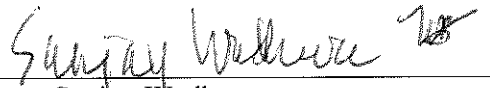
III.

That the Court order such other and further relief as may be necessary and appropriate to achieve compliance with the Subpoena within the time set forth in the proposed Order to Show Cause.

Dated: October 20, 2021  
New York, NY

SECURITIES AND EXCHANGE COMMISSION

By:



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